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IN THE
COURT OF APPEALS OF INDIANA

SALVADOR ALCANTAR, Appellant,	)	
vs.	)	No. 93A02-0711-EX-925
REVIEW BOARD OF THE INDIANA DEPARTMENT OF WORKFORCE DEVELOPMENT and CALUMET PALLET CO., INC., Appellees.	)	

APPEAL FROM THE REVIEW BOARD OF THE
DEPARTMENT OF WORKFORCE DEVELOPMENT
Cause No. 07-R-02160

May 23, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant Salvador Alcantar, *pro se*, appeals the decision of the Review Board of the Indiana Department of Workforce Development ("the Board") denying his request for unemployment insurance because he voluntarily left his employment with Calumet Pallet Company, Inc. We affirm.

Facts and Procedural History

As found by the Administrative Law Judge, the relevant facts are as follows:

> The Administrative Law Judge (ALJ) finds that the claimant was employed by Calumet Pallet for over ten years, from April 1996 to November 16, 2006.
>
> The claimant was a truck driver for this employer subject to the Department of Transportation safety regulations. Those safety regulations set forth, in part, provisions for a drug and alcohol free transportation system. The employer adheres to the safety regulations.
>
> The ALJ finds that on Friday November 17, 2006, the claimant reported to work at approximately 6:00 a.m. to work as a truck driver that day. He was met by Jeffrey A. Bridegroom, Vice President, who noticed that the claimant smelled of alcohol, and that his eyes were bloodshot. The claimant denied that he had been drinking. The claimant was instructed to have a drug and alcohol screen at the Hammond Clinic about 20 minutes away from the facility. The claimant transported himself to the clinic but did not arrive at the clinic until after 8:00 a.m. The clinic tested the claimant positive for alcohol at .007. The claimant was initially suspended without pay. The claimant was also to complete an approved alcohol and drug treatment program. The claimant refused to go forward and complete the program. The claimant quit the employment.

Appellee's Appendix at 65.

On April 12, 2007, a claims deputy of the Indiana Department of Workforce Development determined that Alcantar was not eligible for unemployment insurance benefits because he voluntarily left his employment without good cause. Alcantar filed an appeal. After a hearing, the Administrative Law Judge ("ALJ") affirmed the deputy's decision. On August 15, 2007, Alcantar filed an appeal with the Board, challenging the ALJ's conclusion that Alcantar voluntarily left his employment. The Board affirmed the ALJ's decision, adopting and incorporating by reference the findings and conclusions of the ALJ.

Alcantar appeals.

Discussion and Decision

The Indiana Unemployment Compensation Act provides that "[a]ny decision of the review board shall be conclusive and binding as to all questions of fact." Ind. Code § 22-4-17-12(a). Indiana Code Section 22-4-17-12(f) provides that when the Board's decision is challenged as contrary to law, the reviewing court is limited to a two part inquiry into: (1) "the sufficiency of the facts found to sustain the decision"; and (2) "the sufficiency of the evidence to sustain the findings of facts." Under this standard, courts are called upon to review (1) determinations of specific or "basic" underlying facts, (2) conclusions or inferences from those facts, sometimes called "ultimate facts," and (3) conclusions of law. McClain v. Review Bd. of Ind. Dep't of Workforce Dev., 693 N.E.2d 1314, 1317 (Ind. 1998).

Review of the Board's findings of basic fact is subject to a "substantial evidence" standard of review. Id. In this analysis the appellate court neither reweighs the evidence nor assesses the credibility of witnesses and considers only the evidence most favorable to the

Board's findings. Id. We will reverse the decision only if there is no substantial evidence to support the Board's findings. Stanrail Corp. v. Review Bd. of Dep't of Workforce Dev., 735 N.E.2d 1197, 1202 (Ind. Ct. App. 2000), trans. denied. The Board's determinations of ultimate facts involve an inference or deduction based upon the findings of basic fact and are typically reviewed to ensure that the Board's inference is reasonable. McClain, 693 N.E.2d at 1317-18. We examine the logic of the inference drawn and impose any applicable rule of law. Id. Some questions of ultimate fact are within the special competence of the Board, and it is therefore appropriate for us to accord greater deference to the reasonableness of the Board's conclusion. Id. However, as to ultimate facts, which are not within the Board's area of expertise, we are more likely to exercise our own judgment. Id.

We review conclusions of law to determine whether the Board correctly interpreted and applied the law. Stainrail, 735 N.E.2d at 1202. "In sum, basic facts are reviewed for substantial evidence, conclusions of law are reviewed for their correctness, and ultimate facts are reviewed to determine whether the Board's finding is a reasonable one." Id.

From what we can discern from his brief, Alcantar only challenges the Board's finding of the ultimate fact that Alcantar voluntarily terminated his employment without good cause, disqualifying him from receiving benefits. Alcantar argues that he had good cause for leaving his employment because his employer imposed a penalty beyond what is permitted by federal law. If an individual voluntarily terminates his employment without good cause, he is disqualified from receiving unemployment compensation benefits. Ind. Code § 22-4-15-1(a). The question of whether an employee voluntarily terminated employment without good cause is a question of fact to be determined by the Board. Indianapolis Osteopathic

Hosp., Inc. v. Jones, 669 N.E.2d 431, 433 (Ind. Ct. App. 1996). The claimant has the burden of establishing good cause. Id. The claimant must demonstrate that (1) the reasons for abandoning employment were such as to impel a reasonably prudent person to terminate employment under the same or similar circumstances, and (2) the reasons are objectively related to the employment. Id.

In support of his argument, Alcantar refers us to Department of Transportation Regulation 49 C.F.R. Section 382.505(a), which provides "[n]o driver tested under the provisions of subpart C of this part who is found to have an alcohol concentration of 0.02 or greater but less than 0.04 shall perform or continue to perform safety-sensitive functions for an employer . . . until the start of the driver's next regularly schedule duty period, but not less than 24 hours following administration of the test." Based on this provision, Alcantar asserts that Calumet Pallet should have only prohibited him from driving for twenty-four hours rather than suspending him until the completion of a drug and alcohol program. Section (b) of this regulation provides "[e]xcept as provided in paragraph (a) . . ., no employer shall take any action under [§ 382] against a driver based solely on test results showing an alcohol concentration less than 0.04. This does not prohibit an employer with authority independent of this part from taking any action otherwise consistent with law." 49 C.F.R. § 382.505(b).

In Browning-Ferris Indus. v. Review Bd. of Ind. Dep't of Workforce Dev., this Court interpreted section (b) as leaving it up to the employer as to whether or not to levy an employment sanction against an employee who operates a commercial vehicle with a blood alcohol content less than 0.04. Browning-Ferris Indus. v. Review Bd. of Indiana Dep't of Workforce Dev., 693 N.E.2d 1351, 1354 (Ind. Ct. App. 1998). In a footnote, the Court stated

"[o]ur reading of this language is that an employer is not required to take disciplinary action against an employee with a blood alcohol content lower than 0.04, but the employer may if it so chooses." Id. at 1355 n.4.

Alcantar also fails to recognize in his argument that 49 C.F.R. Section 392.5(a) prohibits drivers of commercial motor vehicles from using alcohol within four hours before going on duty or "having any measured alcohol concentration or detected presence of alcohol, while on duty." (emphasis added) Alcantar did admit at the hearing that he is subject to this regulation. If this provision is violated, the driver shall be placed out-of-service immediately for a period of twenty-four hours. 49 C.F.R. § 392.5(c). We read this provision as the minimum action required by an employer. The part does not prohibit an employer from taking additional disciplinary actions.

Therefore, Calumet Pallet acted within its lawful discretion to suspend Alcantar and require him to complete a drug and alcohol program due to Alcantar reporting to work with a blood alcohol level of at least 0.007. Furthermore, Alcantar readily admitted that he refused to complete the program because it would require him to submit to random alcohol and drug screenings for one year, characterizing it as harassment. Because he did not want to submit to these screenings, Alcantar voluntarily quit his employment. "It is not the purpose of the Unemployment Security Act to allow employees to terminate their employment merely because working conditions are not entirely to their liking. It is only when the demands placed upon employees are unreasonable or unfair, so much so that a reasonably prudent person would be impelled to leave that the Act will provide compensation to employees who voluntarily quit their job." Marozsan v. Review Bd. of Ind. Employment Sec. Div., 429

N.E.2d 986, 990 (Ind. Ct. App. 1982). We do not believe that this disciplinary action is so unreasonable that a reasonably prudent person would be impelled to voluntarily quit his job. Alcantar has not carried his burden to demonstrate that he voluntarily terminated his employment for good cause.

Affirmed.

FRIEDLANDER, J., and KIRSCH, J., concur.